72-209

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No.

72-209

In the

Supreme Court of the United States

AUGUST TERM, A.D. 1972

PETER J. VLAHAKIS,

Petitioner,

vs.

ABRAHAM W. SCHOSTAK; JEROME PINDERSKI; UNIVERSAL SAVINGS AND LOAN ASSOCIATION, a corporation; PAUL J. RIDIKAS; OLGA RYPKUS; EDMUND J. BARABAS; HAROLD LOUIS MILLER; WALTER ROJEK; LUCILLE CASTRO LANE; and JEWELL A. CULLOM,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioner seeks this Court's writ of certiorari in the hope that in righting the wrongs contained in this case he may strengthen the doctrine of law and order which lacks in our society, by thus forcing truth to prevail and by this Court's vigorous denouncing of the complacent tolerance of frauds by the State Courts.

THE OPINIONS BELOW AND THE DATES OF THE JUDGMENTS APPEALED FROM

Petitioner had appealed this case directly from the Circuit Court of Cook County, Illinois, to the Illinois

Supreme Court because the trial court contravened the provisions, of the laws of the State of Illinois, as well as of the U.S. and State constitutions.

ILLINOIS SUPREME COURT RULE 302: DIRECT APPEALS TO THE SUPREME COURT

(a) Cases Directly Appealable. Appeals from the final judgments of circuit courts shall be taken directly to the Supreme Court, . . . (2) in cases involving a question arising under the constitution of the United States or this state.

On March 13, 1969, the Illinois Supreme Court made the following statement on this case: "And now on this day, the Court having diligently examined and inspected the record and the proceedings aforesaid as well as the briefs and argument filed herein, and now being fully advised in the premises is of the opinion, finds and adjudges that this Court has no jurisdiction on direct appeal in this case.

"Therefore, It Is Ordered by the Court that this case be and the same is hereby transferred to the Appellate Court for the First District of the State of Illinois."

On June 4, 1971 an opinion was reported by the Appellate Court, First District (274 N.E.2d 655 (1971)), reprinted in full in Appendix, pp. 1a-4a. The Supreme Court of Illinois denied leave to appeal from the decision of the Appellate Court, without opinion. The order of the Illinois Supreme Court which was entered on March 28, 1972 states: "And now, on this day, it appearing to the Court that petitioner has failed to file a petition for leave to appeal within the time provided by a prior order of this Court, and being fully advised in the premises;

"It Is Hereby Ordered that this cause be and the same is dismissed."

The Judgment sought to be reviewed is the consistent denial to petitioner by the Illinois Courts of due process of law and the equal protection of law, which denial is also indirectly contained in the order entered by the Supreme Court of Illinois on March 28, 1972.

THE STATUTE CONFERRING ON THIS COURT JURISDICTION OVER THIS PETITION

This Court's jurisdiction over this petition for certiorari is conferred by the United States Judicial Code, 28 U.S.C. sections 1257 (3), 2101, which authorize this Court to grant certiorari to review judgments of state courts where a right is specially set up or claimed under the Constitution of the United States, on petition filed within ninety days from the date of that judgment.

Petitioner was further granted an extension by this Court to and inclusive August 7, 1972 to file his petition.

QUESTIONS PRESENTED

1. CAN A STATE WITHIN ITS RESPONSIBILITY UNDER THE FAIR TRIAL REQUIREMENT OF THE FOURTEENTH AMENDMENT KNOWINGLY USE PERJURED TESTIMONY IN SUPPORT OF A JUDGMENT OR DECREE AND, FURTHERMORE, ALLOW SUCH TESTIMONY, JUDGMENT OR DECREE, TO REMAIN UNCORRECTED?

2. CAN A STATE WITHIN ITS RESPONSIBILITY UNDER THE FAIR TRIAL REQUIREMENT OF THE FOURTEENTH AMENDMENT ALLOW A JUDGMENT OR DECREE OBTAINED BY FRAUD OR

DECEIT UPON THE COURT TO REMAIN UNCORRECTED?

3. CAN A STATE WITHIN ITS RESPONSIBILITY UNDER THE FAIR TRIAL REQUIREMENT OF THE FOURTEENTH AMENDMENT DENY RELIEF TO A CITIZEN FROM A JUDGMENT OR DECREE OBTAINED BECAUSE OF PERJURED TESTIMONY, FRAUD OR DECEIT UPON THE COURT AND IN CONTRAVENTION OF ITS OWN LAWS AND CONSTITUTION?

4. DOES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT VITIATE STATE JUDGMENTS OR DECREES WHICH HAVE BEEN OBTAINED THROUGH THE USE OF PERJURED TESTIMONY AND FRAUD OR DECEIT UPON THE COURT?

5. DOES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT VITIATE STATE COURT ORDERS DENYING RELIEF FROM JUDGMENTS OR DECREES WHICH HAVE BEEN OBTAINED BECAUSE OF PERJURED TESTIMONY, FRAUD OR DECEIT UPON THE COURT AND IN CONTRAVENTION OF ITS OWN LAWS AND CONSTITUTIONAL PROVISIONS?

6. CAN JUDGMENT OR DECREE OBTAINED BECAUSE OF PERJURED TESTIMONY, FRAUD OR DECEIT UPON THE COURT BE ALLOWED TO REMAIN FINAL, SUBSISTING AND IN ADJUDICATION ON THE MERITS OF A CASE?

THE CONSTITUTIONAL PROVISIONS INVOLVED

1. U. S. Const. amend. XIV, Sec. 1:

> ". . . . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Illinois Const. Art. 2, Sec. 19:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain by law, right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay."

EXPLANATION OF REFERENCES TO THE RECORD

All references to abstract pages are to petitioner's petition for leave to appeal prepared for use by the Supreme Court of Illinois.

Nine copies of petitioner's petitions to the Illinois Supreme Court have been filed with the Clerk.

TIME AND MANNER OF RAISING FEDERAL QUESTION

In his petitions filed in the State trial Court, the same Court in which Judge Epstein and Judge Cornelius Harrington were still Judges, petitioner asserted various acts of fraud; he further asserted that the respondents and their representatives successfully participated in the fraud, collusion, and conspiracy to deprive petitioner of his civil rights.

Petitioner also alleged that fraud, collusion, and conspiracy complained of deprived him of his day in Court

and of his rights in said proceedings; furthermore petitioner was denied at all times the opportunity to produce evidence to expose perjury and fraud.

Petitioner appealed directly to the Supreme Court of Illinois in conformity with the Illinois practice, previously quoted.

THE NATURE OF THE CASE

On March 20, 1959, petitioner mortgaged the premises known as 1639 Sherwin Avenue, Chicago, Illinois, to the Universal Savings and Loan Association, a corporation for the amount of $17,000.00 to be repaid in 180 or less monthly payments of $139.00 or more plus $31.00 in reserves for taxes and insurance; it was furthermore provided that a default could be declared only if a payment was not made within 30 days from the date it was due.

In the latter part of winter of 1960 said premises were burglarized with a loss to petitioner, however, the insurance carried by Mrs. Rypkus' agency, respondent herein, did not cover petitioner's losses.

Petitioner, despite the objections of Mrs. Rypkus, secretary of the Universal Savings and Loan Association, did purchase other insurance which fully covered him, his premises and the interest of the Universal Savings and Loan Association. Petitioner then requested Mrs. Rypkus to cancel the insurance placed on said premises through her own agency.

Petitioner furthermore made two payments in June 1960 and two payments in August of 1960, in accordance with the agreement.

On September 21, 1960, petitioner received through the mail a demand note and his checks returned, without be-

ing deposited to his bank, demanding the property or $16,806.00, which sum exceeded by $572.00 the balance due, not including the reserve funds of $281.50.

Petitioner's attorney, Theodore G. Maheras, immediately negotiated with the officers of the Universal Savings and Loan Association and it was agreed that if petitioner made a payment of $763.00 the demand would be withdrawn.

On October 3, 1960, petitioner mailed a check of $800.00 to the Association and a week later said check was likewise returned with the comment that the case was in their attorney's hands.

On October 17, 1960, a suit of foreclosure was filed by the Universal Savings and Loan Association, in the then Superior Court of Cook County, Illinois, (case No. 60 S 18715) which suit wilfully, falsely and wantonly alleged among other things under oath that petitioner failed to make payments for the months of June, July, August and September of 1960 and furthermore prayed that an accounting be had and taken by and under the direction of the Courts of the amounts due and owing to the plaintiff under the terms of the mortgage being foreclosed and the principal note secured thereby.

On March 8, 1961 an order was entered by Judge Epstein, referring cause to Walter Rojek, Master in Chancery, without notice to petitioner or his attorney, even though Judge Epstein had agreed to hear the case on March 13, 1961.

Master Rojek was a close acquaintance for over 20 years of Mrs. Rypkus, secretary of the Association, and the cause was referred to him without notice to petition-

er's attorney, Theodore G. Maheras. Strenuous objection to Master Rojek's hearing the case was registered, because petitioner feared would not receive a fair hearing. Master Rojek, nonetheless, heard the case.

Master Rojek proceeded with the hearings, despite petioner's objections, and on August 10, 1961 rendered his report recommending foreclosure.

On August 10, 1961, petitioner requested by motion a 14-day extension for his attorney to file his objection, because his attorney was recalled to active duty by the Air Force reserves and was unable to meet said date. However, the motion was denied, and a foreclosure decree was entered the same day. Petitioner was not represented by counsel at the time of hearing and entry of order.

Subsequent thereto, petitioner, through his attorney filed a petition to set the decree aside and hearings followed. At these hearings Judge Epstein found that no default occurred and showed outwardly great concern about the case. Master Rojek did apologize before the Court for his errors and omissions in his report, blaming overwork and the fact that he was moving to a new house. Furthermore, Judge Epstein requested that the parties get together and cause an amicable settlement and for that purpose gave several continuances.

At the hearing of January 9, 1962, petitioner requested by motion a 7-day continuance for his attorney to be present for the final arguments because at that time he was stranded in New York due to bad weather.

However, said motion was denied and a final decree was entered with the explanation that the Master had assured Judge Epstein that his accountant had examined the ac-

count and found it in default. Petitioner was entitled to a hearing by counsel at this time.

Subsequently, his attorney requested to raise an appeal bond 1½ times the judgment so that he may appeal the case. Petitioner visited several bonding companies; however, he was required to place a collateral of $20,000.00 which he did not have.

On February 27, 1963, petitioner through his attorney filed a petition for leave to appeal under section 76 of the Illinois Civil Practice Act, after the foreclosed premises were redeemed; said petition was denied on April 4, 1964.

Subsequently the attorney Anna Kioutas was retained to file an appeal to the Illinois Supreme Court. Mrs. Kioutas retained the firm of Lane and Cullom, who after talking with Master Rojek failed to file the appeal even though charging the petitioner $1,700.00 for their alleged work.

On January 31, 1963, petitioner read the following ad in the Chicago Daily Tribune: "Private Party — Will pay off your present mtges. and bills. Lower your total monthly payments. No addl. cost to you in most cases. Repay at bank rates up to 20 years. Confidential. Free consultation. A. W. Schostak 274-4263."

Petitioner called Mr. Schostak and he agreed to loan petitioner $22,000.00 to redeem his property and to be repaid at $220.00 per month plus a $30.00 reserve for taxes and the balance of $22,000.00 to be paid on or before one year. Mr. Schostak furthermore showed interest in financing petitioner's contemplated apartment building in said premises, and furthermore suggested that petitioner have his attorney get in touch with his attorney, Jerome Pinderski, to reduce the oral agreement into writing.

Petitioner's attorney, Theodore G. Maheras, and Mr. Pinderski advised him that he give a quit-claim deed of said property to Mr. Schostak and $1,356.00 and after Mr. Schostak is successful in redeeming said property a written agreement will follow.

After the property was redeemed Mr. Schostak refused to enter into a written agreement as was orally agreed.

On April 29, 1963 the attorneys Anna Kioutas, Lane and Cullom filed a suit in equity and obtained an injunction against Mr. Schostak from interfering with the property.

Subsequent thereto, Mr. Maheras called the petitioner and told him that Mr. Pinderski is anxious to settle the case out of Court. The attorneys Lane and Cullom began to investigate Mr. Schostak and found out that he had been practicing deception on many others and furthermore that they feared he was connected with the crime syndicate. The attorneys Lane and Cullom told petitioner that they already had discussed the case with another attorney who had a clout and he was willing to enter the case with an additional fee of $1,500.00 and a charge of $35.00 per hour, which proposition petitioner rejected and asked another attorney, Eugene Busch, to negotiate with Mr. Pinderski for a settlement out of Court.

Mr. Busch worked out an agreement with Mr. Pinderski; however, the attorneys' fees of $3,250.00 of Lane and Cullom were excessive and prevented a settlement. Mr. Pinderski told petitioner that their fees should not be more than $500.00 and suggested that we go before the Master and settle their fees.

On September 29, 1964 the attorneys Lane and Cullom withdrew and Master's hearing followed on September 30, 1964.

At the hearing Mr. Pinderski questioned the attorneys Lane and Cullom about their fees; however, he was unable to pin them down as to their time spent in the case. Subsequent thereto Mr. Pinderski called on Mr. Schostak as his witness and told the Master he was ready to proceed with the case.

Mr. Schostak was sworn to tell the truth and nothing but the truth; however, he did not tell a word of truth.

On October 19, 1964, petitioner presented a motion to Judge Cornelius Harrington seeking an extension of Master's hearing so that he can bring witnesses to show that Mr. Schostak perjured on the issues. Said motion was instantly denied. Mr. Maheras accompanied also the petitioner as a witness and told Judge Harrington the facts as he knew them and furthermore petitioner told Judge Harrington that he was thrown off guard by Mr. Pinderski's false promise of compromise.

On November 10, 1964, the attorney Lawrence Kusek appeared in behalf of the petitioner before Judge Harrington and he was discouraged by Judge Harrington from representing the petitioner, and a decree was entered in favor of A. W. Schostak.

On December 10, 1964, petitioner presented a petition in apt time to Judge Harrington to set the decree aside and let petitioner have an opportunity to present his evidence. Judge Harrington refused to act on said petition.

Subsequent thereto Mr. Pinderski and Mr. Schostak threatened petitioner with imprisonment.

On or about March 3, 1965 petitioner filed a complaint in the U.S. District Court in Chicago seeking among other things an injunction against Mr. Schostak from carrying

out his threats. Said case is known as 65 C 323 and was set for hearing on March 22, 1965 at 10:00 A.M. before Judge Austin.

On March 21, 1965 at 7:00 P.M. two men appeared in petitioner's residence. They told him that they were insurance adjustors and that he was involved into an automobile accident in Evanston, Illinois. Shortly thereafter the two men told him that they were from the Sheriff's police and wanted him for questioning. Petitioner went along with them and he was thrown into a lock-up at a police station. A few hours later he was taken into the Cook County jail and was not allowed to call anyone. The next day he was told that he was sentenced six months in jail.

On April 12, 1965 his petition which was presented to Judge Harrington on December 10, 1964 was dismissed on motion by Jerome Pinderski.

Ill. Rev. Stat. 110 Sec. 68.3 (2) states: "A motion filed in apt time stays execution and the time for appeal from the decree or judgment does not begin to run until the court rules upon the motion."

Subsequent thereto petitioner filed a new action in the U.S. District Court in Chicago, under the 14th amendment to the U.S. Constitution, the Federal Statutes 284 of July 31, 1861, c. 33.12 and 13 of April 20, 1871, c. 22 sect. 17 U.S.C. title 42, sections 1985, 2000b and title 28, sect. 1343.

The case was dismissed on motion by the respondents that petitioner did not exhaust his state's remedies.

Subsequent thereto petitioner filed a new action against the Internal Revenue Service in which he included the respondents. Said case was brought into this Court; how-

ever, the Clerk returned petitioner's petition for certiorari because he was unable to pay the $100.00 docket fee, immediately.

On October 4, 1967, Abraham W. Schostak filed this instant action in the Circuit Court of Cook County, Illinois, whereby he is seeking an indemnity in the sum of $100,000.00 plus costs from petitioner, alleging that the petitioner disrupted his business and caused great mental anxiety. Petitioner filed an answer and an affirmative defense to Mr. Schostak's allegations charging him with perjury in obtaining a decree in his favor in the case 63C6198 and furthermore with being guilty of deceptive practices and usurious loans.

Petitioner also brought a counter claim and a cross claim against the respondents, alleging that the respondents conspired to defraud petitioner of his property, having defrauded him by perjury and deception, having obtained decrees by fraud upon the Court and furthermore conspiring to have him illegally imprisoned and having caused great damage to his business, reputation and credit, as well as to his well being.

On July 30, 1968, petitioner's counterclaim and affirmative defense were dismissed by Judge Brussell, even though Judge Brussell previously told respondents that he will hold them to their motion made in the Federal Courts in which they stated that petitioner had remedies in the State Courts which he did not exhaust. Despite Judge Brussell's statement, petitioner was assessed with attorneys' fees.

Petitioner took the case on appeal to the Illinois Supreme Court because petitioner was denied due process and the equal protection of the laws. He was not allowed to bring in his evidence.

On March 15, 1969 petitioner received the following letter from the Clerk of the Illinois Supreme Court:

"March 13, 1969

"Gentlemen:

"The Supreme Court today made the following announcement concerning the above entitled cause:

"Appellant contends that we have jurisdiction on direct appeal on the grounds that the following questions are involved: the denial of a change of venue, a claim that witnesses committed perjury, alleged usurious interest on a loan, deceptive practices by one of the parties, a claim that the statute of limitations is not applicable, and a claim that certain prior proceedings are not *res judicata*. No substantial constitutional question is presented.

"The motion by appellees to dismiss is denied and on the Court's own motion the cause is transferred to the Appellate Court for the First District.

"Very truly yours,
Clerk of the Supreme Court."

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.

THE RATIONALE OF THE DECISION OF THE ILLINOIS SUPREME COURT IN THE INSTANT CASE IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH THE RATIONALE OF THE DECISIONS OF THIS COURT.

The financial interest of a judge who would be compensated by costs imposed on the defendant in the event of conviction but who would receive nothing in the event of an acquittal was held a denial of due process.

In *Tumey* v. *Ohio,* 273 U.S. 510 (1927), the Court there said (p. 532):

> ". . . The requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law."

Similarly, emotional involvement of the trial judge in the outcome of the case is a denial of due process. In *In re Murchison,* 349 U.S. 133 (1955) the court there said (p. 136):

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge of his own case and no man is per-

> mitted to try cases where he has an interest in the outcome. That interest cannot be defended with precision. Circumstances and relationships must be considered. . . ."

The significant aspect of both these cases is that a denial of due process was found in the existence of a set of circumstances regarded as creating a probability or the appearance of prejudice.

But in the instant case denial of due process does not consist alone or even primarily in the mere fact that Master Rojek was a close acquaintance for over 20 years of Mrs. Rypkus, secretary of Universal Savings and Loan Association. The fact that Judge Epstein entered a decree knowing that there was perjury, and fraud upon the Court by Master Rojek, heard and saw the evidence and yet unconscionably decided to conceal and adjudicate fraud is a complete disregard of the law and the constitutional provisions in question. The record clearly shows that the petitioner made two payments in June for June and July of 1960 and two payments in August for August and September of 1960.

The manager of the Universal Savings and Loan Association under oath admitted that the Association returned the payments petitioner made in August 1960. Furthermore, in his report Master Rojek shows no accounting for the years of 1959 and 1960. His accounting began on January 31, 1961, why? If he had shown an accounting for 1960 he would have shown a balance for June 30, 1960, in the sum of $15,676.65 for the loan in question and the balance of his self-serving table shows that the balance under the mortgage agreement would have to be in the sum of $16,053.66 for a good standing loan!

The Master states: "The table serves to refute the contention of the Defendants that a condition of default does not exist. It appears from Plaintiff's exhibit number 4 that the amount of principal balance after 17 payments as alleged by the Defendant did not reach the principal balance required by the direct reduction figures of the aforementioned table but reflect a principal sum of $16,220.79 and escrow balance of $187.34."

It is further the findings of the Master that the testimony of the expert witness was unnecessary in that the Master was able to make the determination without the aid or assistance of the expert."

The whole litigation was a matter of accounting, the Master received $500.00 in fees and $315.00 in commission for selling the premises back to the Universal Savings and Loan Association, plus miscellaneous expenses, a total of $915.50 and an unaccounted amount in the neighborhood of $600.00. It certainly is a good profit for the master for few hours of work! Both litigants asked for accounting by the Court, no accounting was presented! The Master naturally avoids the balance shown in the demand note of the Universal Savings and Loan Association reflecting in their books as of September 15, 1960 the sum of $16,-806.00 since in his own findings the balance due together with interest 4½ months later (no payment was accepted since 6-3-1960) as of January 31, 1961 is in the sum of $16,581.25; a comparison of these two figures clearly show an erroneous balance of the association and furthermore why the Master did not submit his total accounting to the Court. Furthermore, the record shows that the balance no the escrow account was $281.50 and not $187.34.

Furthermore the Master stated:

> "The Plaintiff has made sufficient proofs to establish the existence of a default. That the defendants have made no payments since June 30, 1960, on said note and mortgage since June 30, 1960, and said default has continued to this date, ..."

The record clearly shows that petitioner made two payments on August 1960 and $800.00 (4.56 payments) on October 3, 1960, which were returned!

It has been held as extrinsic the fraud practiced by one in a fiduciary capacity (such as Master Rojek), which precluded full inquiry into the amount properly due on an accounting, even where the amount due was the mere matter at issue. *Stenderrup* v. *Broadway State Bank,* 219 Cal. 593, 28. 2d 14 1933; *C. F. Pickens* v. *Merriam,* 242 Fed. 363 (9th Circ. 1917).

All the above fraudulent misrepresentations made to tribunal by Master Rojek, concerning the merits of the claim have been held extrinsic fraud. *Publicker* v. *Shallcross,* 106 F. 2d. 949 (3d Cir. 1939). The Court further said that if a litigant is injured through the corruption or fraud of the Court or other body disposing of his case, he is entitled to redress under this section of the constitution. (Fourteenth amendment to the U.S. Constitution.) See *Fall Brook Irrigation District* v. *Bradley,* 164 U.S. pp. 167-70; *Louisville & Nashville Railway Co.* v. *Kentucky,* 183 U.S. pp. 515-16. Similarly in the case *Vlahakis* v. *Schostak,* 63 C 6198, the respondent Abraham Schostak obtained a decree in his favor by throwing petitioner off his guard under a false promise of compromise, and furthermore by perjury.

This Court's justices stated: ". . . Any perjury committed to induce favorable judicial action on the merits

is a fraud upon the Court so that a full literal application of this notion would make virtually all fraud extrinsic."

Hazel Atlas Glass Co. v. *Hartford Empire Co.*, 322 U.S. 238, 161 n. 18, 64 Sup. Ct., held: "Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, a false promise of compromise; . . . . these and similar cases which show that there never has been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained" *United States* v. *Throckmorton*, 98 U.S. 61, 65-66, 25 L. Ed. 93, 95 (1878).

The Illinois law also states: . . fraud or collusion in the procurement of a judgment constitutes a sufficient ground for opening or vacating such judgment at any time. *Nash* v. *Park Castles Apt. Bldg. Corp.*, 1943, 50 N.E. 2d 725, 384 Ill, 68.

A century ago Kent wrote in his commentaries on American law:

> "When the spirit of liberty has fled and truth and justice are disregarded, private rights can easily be sacrificed under the form of law."

It is clearly shown that the interpretation by the Illinois Courts of the constitutional provisions contained in the fourteenth amendment to the U.S. Constitution is diametrically apart from this Court's interpretation.

II.

THIS CASE IS OF SUFFICIENT IMPORTANCE TO ELICIT CERTIORARI.

Even if there were no conflict of judicial authority, the questions presented in this case are of sufficient moment to the society or public to elicit certiorari.

But there is direct and irreconcilable judicial conflict.

The practice of law incompatibly with the canons of ethics of the law profession needs the restraining influence by this Court. Mike Royko, a Daily News columnist, writes: "The fair fix. A north side business man raises an interesting question about prices. He was arrested recently for drunken driving. Because he needs his car in his work he didn't want to risk being found guilty and having his driver's license suspended. So he stopped in at his friendly ward committeeman's office to see if they could help him in any way. They were understanding, as they always are in such matters, and sent him to see a friendly attorney who is active in politics in that ward. 'I WENT TO SEE HIM AND HE TOLD ME that he could get me off,' the business man said, 'but it would cost me $1,000. That's a lot of dough, but I gave it to him. Then after the case was continued, he told me I'd have to come up with another $500.00. . . . He just said that if I wanted to be sure of beating it, I'd have to pay. He got me off, but now I am wondering if I was taken.' . . ."

In another instance the Chicago Daily News on April 1, 1971 states: "The little man's friend in Court. . . . Magistrate Dunne found what a Daily News investigation had disclosed earlier, that many court files in collection cases were not properly completed, that attorneys were adding illegal charges and that lawyers were causing long delays to discourage poor clients from coming into court. When the client finally stopped coming, . . . attorneys won judgments from them in their absence.

"In a crackdown that hit collection lawyers in their wallets, Dunne began dismissing faulty cases, demanding that improper files be corrected and refusing continuances

longer than 60 days. For his reward, the Bar Association prevented him from becoming a judge! . . . ."

In the Chicago Sun Times of Sept. 3, 1971 appeared the following article: "Survey finds Illinoisans rate officials corrupt, tied to mob. The Illinois Institute of Technology Research Institute conducted the study for the crime commission. There is little doubt that a continuing conspiracy exists between racketeers, certain politicians and some business, labor and government officials to maintain the organized rackets. . . ."

Not long ago some civic groups and attorneys fought the decision of the Circuit Court of Cook County to elevate over hundred magistrates to associates judges who were considered by the Chicago Lawyers Association as incompetent to hold that office, and yet they became associate judges.

On June 30, 1972 the Chicago Daily News quoted U.S. Attorney James R. Thompson saying "For too long, Chicago citizens have taken perverse delight in regarding this as a bawdy, brawling frontier town. . . It is known all over the country as a city of Clout, and its citizens must partially share the blame. Only now residents begin to demand reforms." However, Mr. Thompson fails to state how can an average citizen afford not to be complacently tolerant with fraud and corruption?

Petitioner has been fighting for his rights for over 10 years! What has he received in return? He was thrown into jail as a bum so he would shut up, he lost his job and his business which he was developing, his wife became paralyzed from mental anguish, she and his children have been threatened with harm, he lost important jobs, his credit and developing business, his reputation and practically became destitute!

Where can he find redress? to the Illinois Courts? the result is vaguely contained in this petition!

One may maintain that this may be a remote, isolated or extraordinary case! In their affidavits Mr. and Mrs. Raptis (see P-7 Appendix petition for leave to appeal) stating "Mr. Schostak's breach of our agreement, his fraudulent procedure in doing business wiped us out completely. . . . We retained Mr. Crist Harvalis, an attorney at law of 221 North La Sal'e Street who told me, that Mr. Schostak is a first class Loan Shark and that he could do not much to help us because he was afraid of his own and his family's safety and told us to write it off to bad experience and that we should be more concerned with our and our family's safety rather than the money we may try to recover."

Mr. Steven C. Spencer, an attorney at law, visited Mr. Schostak in his office see his affidavit (P-6 Appendix pet. for Leav.), told petitioner that during his conversation with Mr. Schostak, Mr. Schostak boasted that he always collects—he's got his own collection crew.

Mr. Harold Eberhardy, another victim of Mr. Schostak and Jerome Pinderski, all of whose assets were tied up in Court by Mr. Schostak by an ex parte injunction, was frantically looking for an attorney to help him.

Mr. Eberhardy landed the Attorney William C. MacLean, who filed a counterclaim against Mr. Schostak and furthermore succeeded in forcing Mr. Pinderski to draw from his special account at Harris Trust and Savings bank $10,000.00 and give said funds to Mr. Schostak in behalf of Mr. Eberhardy. Petitioner asked Mr. Eberhardy why Mr. Pinderski will give you $10,000.00? Mr. Eberhardy told petitioner that Mr. Pinderski shook me off of more money than Mr. Schostak did. Then comes his

attorney with the following motion (case 64 CH 5718): "Now comes William C. MacLean, Attorney of Record for Defendant, Harold Eberhardy, and asks leave of Court to Withdraw as Attorney of Record for said Defendant. . . I am of the opinion that the granting of the motion will not delay the trial of the case. . . . William C. MacLean, Suite 1935, 135 So. La Salle, Chicago, Ill."

If this Court reviews Mr. Maheras' affidavit (P-5 Append. pet. for Leav.) it will clearly see Mr. Schostak's perjury and fraud. Mr. Maheras is also a professor of law at Roosevelt University in Chicago, and a man of integrity. Pages 10, 11, 12, of the appendix for leave to appeal are show copies of letters which clearly show the false promise of compromise of Mr. Pinderski. Besides these few instances there are also the Keanes who lost their home and other assets because of Mr. Schostak's deceptive practices and furthermore the couple ended up in divorce and Mrs. Keane went into bankruptcy to save her good job! They had lawyers. What did they do about Mr. Schostak's deceptive practices? Ill. Rev. Stat. Chapter 13 sect. 4 States: Oath ". . . . I do solemnly swear, that I will support the constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of attorney and counselor at law to the best of my ability." And yet in this case three attorneys, Walter Rojek, Harold Louis Miller and Jerome Pinderski, misrepresent the facts as stewards of justice in order to making a living? The insensitivity of the State Courts towards malpractice and fraud committed by attorneys is appalling!

The State Courts are misapplying the Illinois law contained in Ill. Rev. Stat. Chapter 110 sect. 41. "Allegations and denials, made without reasonable cause and not in

good faith, and found to be untrue, shall subject the party pleading them to the payment of reasonable expenses, actually incurred by the other party by reason of untrue pleading, together with a reasonable attorney's fee. to be summarily taxed by the court at the trial."

Petitioner has been totally assessed with attorneys' fees in excess of $7,000.00 and charged by his attorneys fees of over $10,000.00 in order to defend a piece of real estate which was taken from him at the whim of the judiciary and without legal ground.

Where can the petitioner address himself for redress! To the State Courts! The result is a catastrophe! The State Courts claim that the petitioner made untrue statements, but fail to show one real untrue statement that he has made! If this Court does not exert its restraining influence, any racketeer may petition for relief and damages in the Circuit Court of Cook County and he may get it too. This I hope may not be taken as an insult because there are a few fine judges that serve in the Circuit Court of Cook County, but this is addressed to unscrupulous attorneys who have no regard to society and their total ambition is to grab money at whatever the cost may be.

An instance that may prove the point is that at the County jail one of the inmates confessed to petitioner while they were waiting to be taken to the Court, that he had gasoline station business and he was swindled out of it by loan racketeers, he could find no justice and resorted to burglary! He was very bitter at society. He said he had a wife and 3 daughters and a shyster lawyer with a clout! He said he had given his lawyer $4000.00 retainer and he assured him of leniency in the Courts. Furthermore he boasted he had made enough money which was set up in trusts by his attorney so that his children go through college and take care of his wife for the rest of her life!

Petitioner also have read reports in the newspapers that some attorneys have suggested to their clients to repeat the crime that they have been defended by their attorneys in order to raise funds to pay their fees. Petitioner has retained the attorneys, Theodore G. Maheras, Eugene Busch, Anna Kioutas, Lucille Castro Lane, Jewell Cullom and finally Cornelius Pitt. The last attorney, an attorney for Mr. Eberhardy, volunteered to take petitioner's case because as he put it, it is a shame to have men like Mr. Pinderski in the Bar and Mr. Schostak loose to deceive people! What happened? After few appearances before the Court in this case he advised petitioner to go into bankruptcy and dismiss this case, because the Union of Attorneys and Judges are against him and he would not receive a fair trial. Petitioner asked M. Pitt to withdraw as his attorney and continued his fight pro se. There are many people that are following this case with interest, especially the ones defrauded by Mr. Schostak, and any denial of justice is not a denial for this case but a dampening of many people's hope that somehow somewhere along the judicial ladder there is hope to find the protection and the shield of the Constituion of the United States of America.

PRAYER FOR CERTIORARI

For the reasons urged in this petition, petitioner respectfully seeks this Court's writ of certiorari to review and reverse the judgment of the Circuit Court of Cook County Illinois, which was upheld by the Appellate Court of Illinois First District and the Supreme Court of Illinois in this case.

Respectfully submitted

PETER J. VLAHAKIS (Pro se)

APPENDIX

JONES, J.

In this case the defendant filed a counterclaim and a number of third party actions against ten third party defendants.

The defendant petitioned for a change of venue "to another county court." This was accompanied by an affidavit of defendant consisting entirely of conclusions and accusations against many persons, which petition and affidavit were ordered stricken in consequence of their failure to set forth legal grounds for a change of venue. We will omit the allegations of this affidavit made against persons or firms, the validity of which charges is in no way relevant to change of venue from the county. The affidavit concludes:

> "8. From Defendant's above experience there exist a mathematical problem one in 360 chance for him to have a fair trial in Cook County, Illinois.
>
> 9. Defendant believes that this small chance of having a fair trial gave the ambition to the plaintiff to file this nonprobable cause."

The record then reflects a number of procedures in which various of the third party defendants and the plaintiff made various motions with respect to the third party complaint and counterclaim. It appears that the defendant, *pro se,* appeared at these proceedings and filed various briefs and petitions.

The defendant appeals *pro se* from the order striking the change of venue petition and affidavit, from an order striking the amended counterclaim, from an order allow-

ing attorneys fees and costs against the defendant in consequence of allegations and denials made in the pleadings which were found to be without reasonable cause, not in good faith and untrue. He appeals also from similar orders dismissing the third party complaint as to others of the third party defendants and finding that certain of the allegations of the third party complaint were untrue, made without reasonable cause and not in good faith.

This appeal was taken to the Supreme Court of Illinois under a claim of constitutional grounds. The Supreme Court has transferred the matter here for want of a substantial constitutional question.

Defendant's brief and argument violate many of the rules governing such documents. The statement of the case and argument are filled with many assertions which are not reflected in any fashion in the record.

While they are not properly presented, two contentions are made by the appellant: that the change of venue request was improperly denied and that the action of the trial court in dismissing the third party complaints and assessing attorney fees and costs against him in consequence of violation of Section 41 of the Civil Practice Act (Illinois Revised Statutes, Chapter 110, Section 41) somehow denied the defendant due process of law.

With respect to the petition for change of venue, Section 1 of the Venue Act (Illinois Revised Statutes, Chapter 146, Section 1) sets forth the causes for change of venue. One of the causes is that a party shall fear that he will not receive a fair trial in the court in which the suit or proceeding is pending because the inhabitants of the county are prejudiced against him. Such an application, according to Section 4 of the statute, must be accompanied by affidavits of at least two other reputable

persons resident of the county. No such affidavits accompany the petition. The affidavit of the defendant contains no allegation which could be a basis for a change of venue from the county. This petition was properly denied.

The Supreme Court in finding that no substantial constitutional question was involved has already answered the primary issue raised by the defendant. Nevertheless it is apparent from the record that the proceeding was conducted with considerably more than due deference to the rights of the defendant. The assessing of reasonable expenses and reasonable attorney fees by the court, where allegations and denials are made without reasonable cause and not in good faith and found to be untrue, is authorized by Section 41 of the Civil Practice Act and has been frequently applied by the courts.

Defendant's contention is that due process requires he be entitled to a jury trial on his third party complaint for indemnity, as well as on his counterclaim, regardless of the lack of legal merit of his claim and in diregard of the fact that his rights have been previously adjudicated in other courts in which the judgments have become final. This contention is totally without legal merit and will receive no further discussion.

Defendant requests that this Court apply constitutional provisions of due process of law while he freely disregards due process of law by seeking endlessly to relitigate matters which are *res adjudicata*. Only a system which shows almost endless patience would permit such contentions to be made. Defendant has had his day in court. He has had due process of the law.

Judgment affirmed.

CONCUR: /s/ Edward C. Eberspacher
CONCUR: /s/ George J. Moran